



Immigration and Refugee Board of Canada:

An Overview



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This publication provides an overview of the Immigration and Refugee Board of Canada and what it does. It is not a legal document. For precise, legal information, please consult the *Immigration and Refugee Protection Act*, Regulations, and Rules of the Refugee Protection Division, the Immigration Division and the Immigration Appeal Division. You can find them on the IRB Web site at: www.irb-cisr.gc.ca.



Table of contents

Introduction	3
Specialized words	3
Canada's Immigration and Refugee System	4
About the Immigration and Refugee Board of Canada	6
The IRB does...the IRB does not	7
The Tribunal Process	8
The Refugee Protection Division	9
What does it do?	9
Who are Convention refugees and persons in need of protection?	9
How do you make a claim for refugee protection?	10
Personal Information Form (PIF) – Do's and Don'ts	11
What happens next to your claim?	11
The refugee determination process	12
The fast-track expedited or fast-track hearing process	13
What information does the IRB use to determine who is a refugee?	13
What happens after your claim is decided?	14
The Immigration Division	15
What does it do?	15
Who appears before the Immigration Division for an admissibility hearing?	15
What are the different kinds of removal orders?	16
What happens at an admissibility hearing?	16
What happens after an admissibility hearing?	16
The admissibility hearing process	17
Who appears before the Immigration Division for a detention review?	17
What happens at a detention review?	17
The detention review process	18



The Immigration Appeal Division	19
What does it do?	19
What are the grounds for an appeal?	20
What happens if you appeal a sponsorship refusal?	20
What is alternative dispute resolution?	20
The sponsorship appeal process	21
What happens if you appeal a removal order?	21
The removal order appeal process	22
What happens if you appeal a decision on the residency obligation?	22
The residency obligation appeal process	23
Glossary of Technical Terms	24
Immigration and Refugee Board of Canada Offices	28
Acronyms	31



Introduction

The Immigration and Refugee Board of Canada (IRB) is a vital part of Canada's immigration and refugee system. This booklet explains what the IRB is and how it works. It provides an overview of the IRB for:

- people appearing before the IRB
- family, friends, supporters, advisors and representatives of people appearing before the IRB
- Canadians who want to know about the IRB and how it works

For more information about the IRB, visit our Web site (<http://www.irb-cisr.gc.ca>).

Specialized words

Specialized words often come up in immigration and refugee matters. To help you understand these words, we have defined many of them in this booklet. You will find the most important definitions right on the page as you read. Others are in a glossary at the end of the booklet. Any time we use a word defined in the glossary, we will highlight it using italics and bold, like this:

adversarial process





Canada's Immigration and Refugee System

Canada's immigration and refugee system has three main parts:

- Citizenship and Immigration Canada
- Canada Border Services Agency
- Immigration and Refugee Board of Canada

All three are part of the Government of Canada.

Citizenship and Immigration Canada (CIC) has overall responsibility for immigration and refugee matters. For example, CIC:

- decides who should be referred to the IRB to apply for refugee protection in Canada
- selects those who can immigrate to Canada
- issues visitor, worker and student visas
- issues travel documents
- determines residency obligations
- grants Canadian citizenship
- administers resettlement programs

The **Canada Border Services Agency (CBSA)** provides integrated border services, such as managing, controlling and securing Canada's borders, in support of national security priorities. For example, the CBSA:

- admits people to Canada
- refers refugee claims made at ports of entry to the IRB
- detains people who are a security risk or a danger to the public
- **removes** people who are **inadmissible** to Canada

The CBSA is part of the Government of Canada's public safety portfolio. It is an agency of **Public Safety and Emergency Preparedness Canada (PSEP)**.

An **immigrant** is a person who has chosen to settle in Canada and has been accepted as a permanent resident by the Government of Canada.

A **refugee** is a person who has had to flee his or her country because of a well-founded fear of persecution and has been given protection by the Government of Canada.

A **person in need of protection** is a person who cannot return to his or her country because of a danger of torture, a risk of cruel and unusual treatment or punishment or a risk to his or her life and has been given protection by the Government of Canada.



The **Immigration and Refugee Board of Canada (IRB)** makes decisions on immigration and refugee matters in Canada. The IRB:

- decides who needs refugee protection
- hears appeals on certain immigration matters
- conducts *admissibility hearings* and *detention reviews*

The IRB is Canada's largest *administrative tribunal*.

Although it reports to Parliament through the Minister of Citizenship and Immigration, the IRB is independent of both Citizenship and Immigration Canada and the Canada Border Services Agency.

Immigration and Refugee Protection Act (IRPA)

The *Immigration and Refugee Protection Act* governs matters concerning immigration and refugee protection in Canada, including much of the work of the IRB. It came into force on June 28, 2002, replacing the previous *Immigration Act*. In this booklet, it will be called IRPA. You can read IRPA on the IRB Web site at: www.irb-cisr.gc.ca.

The IRB makes decisions that affect the lives and liberty of the people appearing before it. These decisions contribute to the security of Canadians and the integrity of our immigration and refugee system.





About the Immigration and Refugee Board of Canada

The Immigration and Refugee Board of Canada is made up of three divisions:

- the Refugee Protection Division
- the Immigration Division
- the Immigration Appeal Division

The **Refugee Protection Division (RPD)** decides claims for refugee protection made by people already in Canada.

The **Immigration Division (ID)** hears two types of cases:

- immigration *admissibility hearings* for foreign nationals or permanent residents who are believed to have *contravened* the *Immigration and Refugee Protection Act (IRPA)*
- cases of foreign nationals or permanent residents held in detention for immigration reasons

The **Immigration Appeal Division (IAD)** hears appeals on immigration matters. These include:

- appeals by *sponsors* whose applications to bring family members to Canada have been refused by Citizenship and Immigration Canada (CIC)
- appeals of *removal orders* made against permanent residents, refugees and other protected persons, as well as foreign nationals with *permanent resident* visas
- appeals by permanent residents who have been found by a visa officer outside Canada not to have met their residency obligation
- appeals by the CBSA on behalf of Public Safety and Emergency Preparedness Canada (PSEP) of decisions on admissibility made by the Immigration Division of the IRB

A *permanent resident* is a person whom the Government of Canada has allowed to live permanently in Canada, and who may later apply to become a *Canadian citizen*.

A *foreign national* is a person from another country who is not a Canadian citizen or a permanent resident.



The IRB does... the IRB does not

The IRB does...	The IRB does not...	CIC does...	The CBSA does...
	<ul style="list-style-type: none"> • make refugee and immigration policy 	✓	
	<ul style="list-style-type: none"> • determine the eligibility of people to claim refugee protection 	✓	✓
<ul style="list-style-type: none"> • decide refugee claims made by people in Canada 	<ul style="list-style-type: none"> • decide refugee claims made by people abroad 	✓	
<ul style="list-style-type: none"> • hold admissibility hearings to determine if people may enter or remain in Canada 	<ul style="list-style-type: none"> • select immigrants 	✓	
<ul style="list-style-type: none"> • hold detention reviews 	<ul style="list-style-type: none"> • arrest and detain people under <i>IRPA</i> 		✓
<ul style="list-style-type: none"> • hear and decide appeals on immigration matters (removal orders, sponsorship appeals, residency obligations) 	<ul style="list-style-type: none"> • issue visitor visas, student visas, travel documents, work permits or Minister's permits 	✓	
	<ul style="list-style-type: none"> • determine residency obligations 	✓	
	<ul style="list-style-type: none"> • do pre-removal risk assessments (PRRA) 	✓	
	<ul style="list-style-type: none"> • remove people from Canada 		✓
	<ul style="list-style-type: none"> • decide applications to stay in Canada on humanitarian and compassionate grounds 	✓	
	<ul style="list-style-type: none"> • issue security certificates 	✓	✓
	<ul style="list-style-type: none"> • grant Canadian citizenship 	✓	



The Tribunal Process

While each division of the IRB is responsible for making decisions on different immigration or refugee matters, they all follow an *administrative tribunal* process similar to what happens in a court, though less formal. The process is flexible and can take many forms so long as it ensures that the IRB makes well-reasoned, efficient and fair decisions. The IRB tribunal process is based on Canadian law, Canada's international obligations and Canada's humanitarian traditions.

In the tribunal process:

- When you appear before the IRB, you have the right to be represented at your own expense by *counsel* – a lawyer, licensed immigration consultant, trusted advisor or family member.
- You have the right to be heard and to present evidence and arguments to an impartial decision-maker.
- Hearings are usually held in person. They can also be held by videoconference, telephone or other means that allow for a fair hearing.
- Proceedings are in either English or French, and when you appear before the IRB, you may also use an interpreter provided by the IRB who speaks your language.
- All testimony is given under oath (by swearing on a holy book) or by affirmation (a solemn promise to tell the truth).
- The people who hear the cases and make the decisions are called *members*. In most cases, one member hears the case.
- Hearings of refugee claims are usually private.
- Other hearings are usually open to the public. That means media or members of the public may observe hearings or get information about a case.
- The setting and procedures for hearings are generally informal, so evidence is not limited by technical or legal rules.
- Each division has rules on procedures. The rules cover matters such as time limits, evidence, documents and other responsibilities of counsel or the people appearing before the IRB.
- All decisions are based on the evidence provided and the law.
- Members must provide reasons for final decisions. Sometimes the member may not write out the reasons, but may state them at the end of the hearing. Or, sometimes the member may write out the reasons for the decision later, after the hearing.
- You, or the Minister of Citizenship and Immigration, or the Minister of Public Safety may apply to the Federal Court of Canada for *judicial review* of an IRB decision. However, you must first obtain the Court's permission. This is called *leave*.



The Refugee Protection Division

What does it do?

The Refugee Protection Division (RPD) decides refugee claims made by *people who are in Canada*. It holds **refugee determination hearings** or uses other processes to come to these decisions. Citizenship and Immigration Canada (CIC) decides refugee claims made by people outside Canada, for example, through resettlement programs for people living in refugee camps.

Canada has an obligation to grant protection to **Convention refugees** and other persons in need of protection. This is because Canada has signed a number of United Nations conventions, including:

- the 1951 *Convention Relating to the Status of Refugees*
- the 1967 *Protocol Relating to the Status of Refugees*
- the 1984 *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*

The RPD determines whether people who appear before it are:

- Convention refugees
- persons in need of protection

In this booklet, both will be called “refugees.”

Who are Convention refugees and persons in need of protection?

Convention refugees are people who have left their home country and have a well-founded fear of persecution based on

- race
- religion
- nationality
- political opinion, or
- membership in a particular social group

Persons in need of protection are people whose **removal** to their home country would subject them personally to

- a danger of torture
- a risk to their life, or
- a risk of cruel and unusual treatment or punishment



However, with respect to the risk to life or the risk of cruel and unusual treatment or punishment, there are some limits:

- The risk in question must exist throughout the country.
- The risk must be personal; it cannot be a risk faced generally by other people in or from the country.
- The risk must not come from a lawful punishment or penalty that meets accepted international standards. For example, the risk of being jailed for having committed a crime such as murder.
- The risk must not be caused by the country's inability to provide adequate health or medical care.

How do you make a claim for refugee protection?

To claim refugee protection, you must first notify an immigration officer. You can do this at any port of entry to Canada (a border crossing, an airport or a seaport), at a Canada Immigration Centre or at a Canada Border Services Agency (CBSA) office. Any person, who is not a Canadian citizen, can claim refugee protection. The officer will interview you, as the **refugee claimant**, and unless the officer determines that your claim is not eligible, he or she will send it to the Refugee Protection Division of the IRB. If the officer does not make a decision within three working days, your claim will be automatically be sent to the IRB for consideration.

The refugee claimant has the **burden of proof**. This means that you, as the claimant, must show that your claim meets the conditions for being referred to the IRB – in other words, that your claim is eligible for refugee protection.

If your claim is eligible and it is referred to the IRB, you will be given information about the hearing process. This information will include a Personal Information Form (PIF) that you must complete within 28 days. You must fill out the PIF in full, stating the facts of your claim accurately and truthfully.

Not eligible:

Your claim is not eligible if you:

- have already been granted refugee protection in Canada or in another country
- have previously been refused refugee protection in Canada
- came to Canada from, or through, a designated **safe third country** where you could have claimed refugee protection, or
- are a security risk, have violated human or international rights, have committed a serious crime or have been involved in organized crime



Personal Information Form (PIF) – Do’s and Don’ts

- Fill out and hand in your PIF on time – within 28 days of receiving it from CIC or the CBSA.
- Parents must complete and sign a PIF for each child with them (under 18 years of age). Some parts of the PIF will not apply to children aged six and under.
- Usually, the IRB will appoint the parent who signs the PIF as the child’s *designated representative*. This parent will be responsible for making decisions regarding the claim on the child’s behalf.
- If the child is travelling alone, the IRB will appoint a designated representative. The designated representative will complete and sign the child’s PIF.
- Fill out your PIF in either English or French. If necessary, work with a translator to ensure that the information is accurate and clear.
- Tell the whole story – do not leave out any details. If the question does not apply to you, write “N/A” for “not applicable.”
- Complete and sign your own PIF. If someone helped you complete the PIF, you should not sign the form until you are satisfied that the information is complete, true and correct.

What happens next to your claim?

The IRB reviews each claim to determine the fairest and most efficient way to come to a decision about it. The IRB considers many factors, including the country the claim is made against and the nature of the claim itself. The IRB then selects one of three possible ways to decide the claim:

- a fast-track expedited process
- a fast-track hearing
- a full hearing

The refugee determination process is usually *non-adversarial*. This means that the member (the decision-maker) or an IRB employee called a *refugee protection officer (RPO)* asks you questions about the facts supporting your claim in order to establish the truth of your story. No one argues against your claim.

Here is a description of each of the three ways:

- The *fast-track expedited process* is used for claims from certain countries or for certain types of claims. The categories of claims change from time to time, for example, depending on country conditions. In the expedited process, the refugee protection officer interviews you, the claimant. The officer then makes a recommendation about your claim. If the recommendation is favourable, your claim is forwarded to a member who will decide if it should be accepted without a hearing. A hearing is held if you are not granted refugee protection through the expedited process.

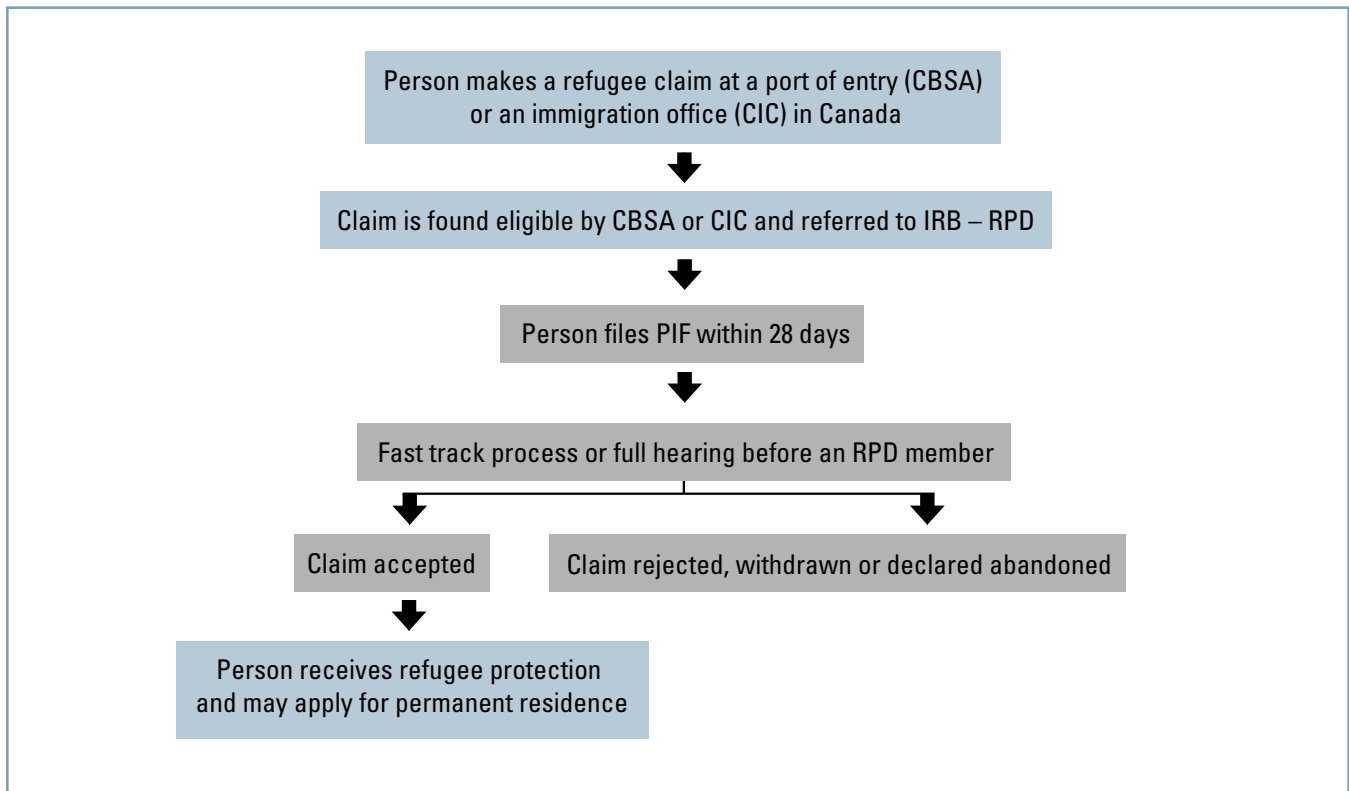


- **Fast-track hearings** are held for claims that appear to be simple because they may be decided on the basis of one or two issues. A refugee protection officer does not attend these hearings.
- **Full hearings** are held for claims that involve more than two issues and may be complex. Full hearings follow the general tribunal process described on page 8. In a limited number of cases, **Minister's counsel** participates in the hearing to argue against the claim. A refugee protection officer may assist the member to ensure that all relevant evidence is presented. Representatives of the United Nations High Commissioner for Refugees (UNHCR) may observe the hearing.

The IRB will assign you to one of these processes: the fast-track expedited process, a fast-track hearing or a full hearing. You will receive a letter with a date, time and place to appear. You must appear or the IRB will assume that you have abandoned, or dropped, your claim. If you cannot make the scheduled time for a serious reason, such as illness, you must contact the IRB right away. A new time may be scheduled.

The refugee determination process

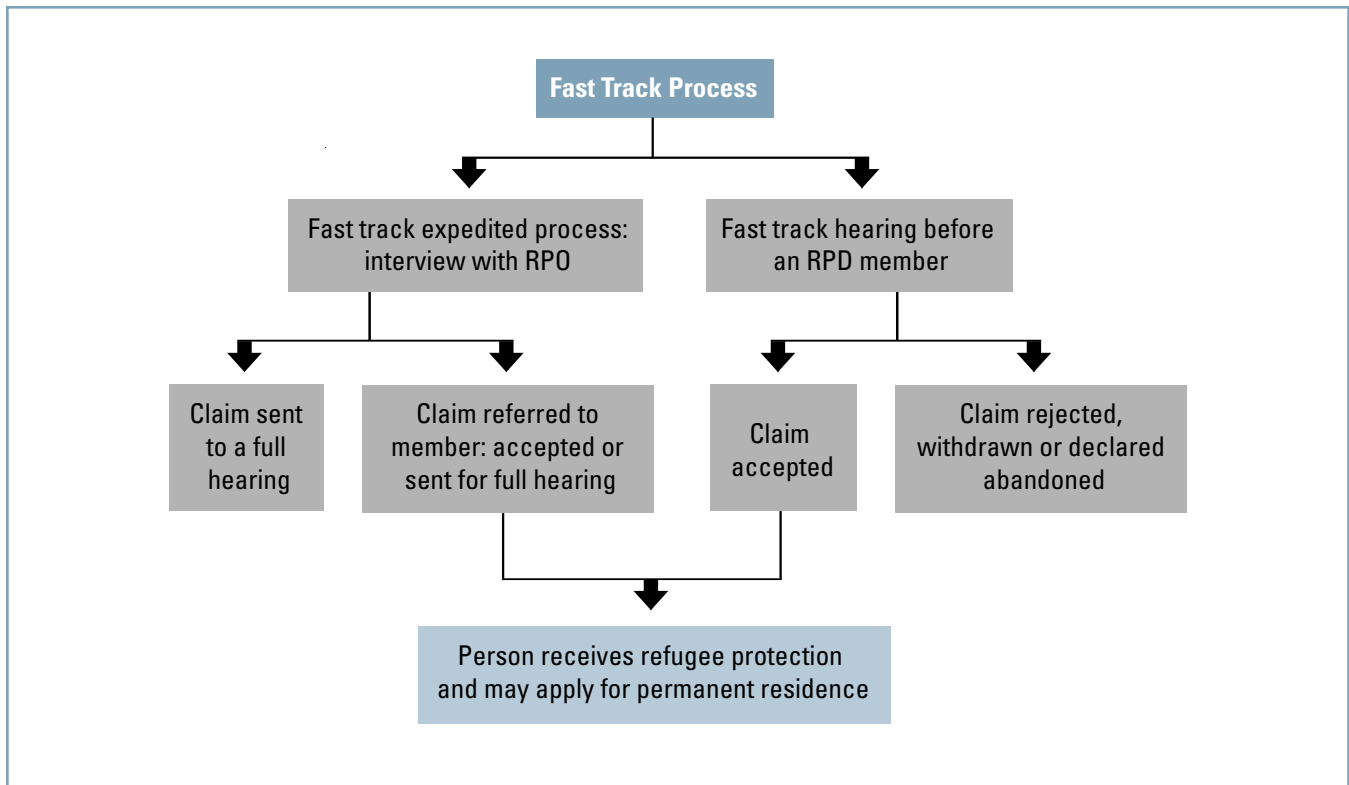
The following chart illustrates the refugee determination process:





The fast-track expedited or fast-track hearing process

The following chart illustrates the fast-track expedited or the fast-track hearing process:



What information does the IRB use to determine who is a refugee?

The IRB uses testimony and evidence given by the claimant about his or her claim. Members also receive full and regular training. They develop expertise on the human rights conditions in many countries and have access to all IRB research.

The IRB Research Program makes current, public and reliable information available to everyone involved in a refugee claim. IRB research supports fair refugee protection determination. Researchers gather information through interviews with human rights workers,





journalists, academics and other authorities. They also gather information through a wide range of publications on international affairs and refugee and migration issues. Using many different sources ensures that the information is fair, full and reliable. As well, the IRB exchanges information on country conditions with international organizations such as the UNHCR, foreign government agencies, and non-governmental organizations. This information is available at IRB Regional Documentation Centres and on the IRB Web site: www.irb-cisr.gc.ca.

What happens after your claim is decided?

If the IRB determines that you are a refugee entitled to protection in Canada, you may apply to Citizenship and Immigration Canada to become a permanent resident.

If the IRB determines that you are not a Convention refugee or person in need of protection, you may ask the Federal Court of Canada for leave, or permission, for judicial review of the IRB's decision. If permission is granted and the judicial review is allowed, the claim is returned to the RPD for re-hearing. Minister's counsel may also apply for leave, or permission, for a judicial review of any IRB decision. Unsuccessful claimants may have other options, such as requesting a *pre-removal risk assessment* from CIC.

Excluded persons

Note: Some people are *excluded persons*. You cannot be granted refugee protection if you:

- have committed a crime against peace, a war crime, or a crime against humanity
- have committed a serious non-political crime outside Canada
- are guilty of acts contrary to the purposes and principles of the United Nations, or
- live in a country (other than your home country) where you have rights similar to those of a citizen





The Immigration Division

What does it do?

The Immigration Division (ID) holds admissibility hearings for people who are believed to have **contravened** the *Immigration and Refugee Protection Act* (IRPA). If the Canada Border Services Agency (CBSA) believes you are **inadmissible** to Canada, it will ask the IRB to hold an admissibility hearing to determine if you are **admissible**, that is, whether you may enter or remain in Canada.

The ID also holds detention reviews for people who are detained, or held, by the CBSA for immigration reasons. If you are detained, you must have your detention reviewed within a certain time, as set out in IRPA. At a detention review, the IRB decides if you may be released from detention.

Who appears before the Immigration Division for an admissibility hearing?

At the request of the CBSA, foreign nationals or permanent residents who are believed to have contravened IRPA appear before the ID for admissibility hearings. (In a limited number of cases, Citizenship and Immigration Canada (CIC) may also request an admissibility hearing.)

You may not be able to enter or remain in Canada if the ID determines that you:

- have failed in some way to comply with IRPA
- are a security threat
- have violated human or international rights
- have been involved in crime or organized crime
- have engaged in **misrepresentation**, such as claiming a false identity
- have a health condition (in some cases)
- do not have enough money to support yourself, or
- are accompanying an **inadmissible** family member

In some cases, the CBSA has the power to issue removal orders, that is, to send you out of Canada, without requesting an admissibility hearing.





What are the different kinds of removal orders?

There are different types of removal orders, depending on your status in Canada and other factors.

Departure order

This is an order to leave Canada within 30 days after the order comes into effect. Before leaving Canada, you must notify the CBSA, which will give you a certificate of departure as proof of your compliance. If you do not leave (or if you do not notify the CBSA), the departure order automatically becomes a deportation order after 30 days.

When the CBSA refers you, as a refugee claimant, to the IRB, it also issues a *conditional departure order* against you. This order will *only* come into effect, and the CBSA will only remove you, if you abandon your claim for refugee protection, or if the IRB does not grant you refugee protection.

Exclusion order

Under an exclusion order, you must leave Canada and cannot return for at least a year unless you have written permission from the Government of Canada. If you were removed for misrepresentation – for example, purposely not telling the truth – you cannot come back for two years, unless you have written permission from the Government of Canada.

Deportation order

Under a deportation order, you will be removed from Canada and you are permanently barred from Canada. This type of removal order is issued for inadmissibility, for example, if you are a security threat, or you have committed a serious violation of IRPA. If you are deported, you may not return unless you have written permission from the Government of Canada.

What happens at an admissibility hearing?

When the CBSA requests an admissibility hearing, it also sends the IRB a report. The report explains why it believes you should not be allowed to enter or remain in Canada. The IRB then holds an admissibility hearing.

Admissibility hearings are *adversarial*. This means that Minister's counsel will say why you should not be allowed to enter or remain in Canada. You, or your counsel, will respond. After considering all the evidence, the member (the decision-maker) makes a decision and then issues an order. The order either requires you to leave Canada or allows you to enter or remain in Canada. Terms and conditions may be imposed. If you were in detention, the member may order you to remain in detention if he or she believes that the reasons for the original detention still stand.

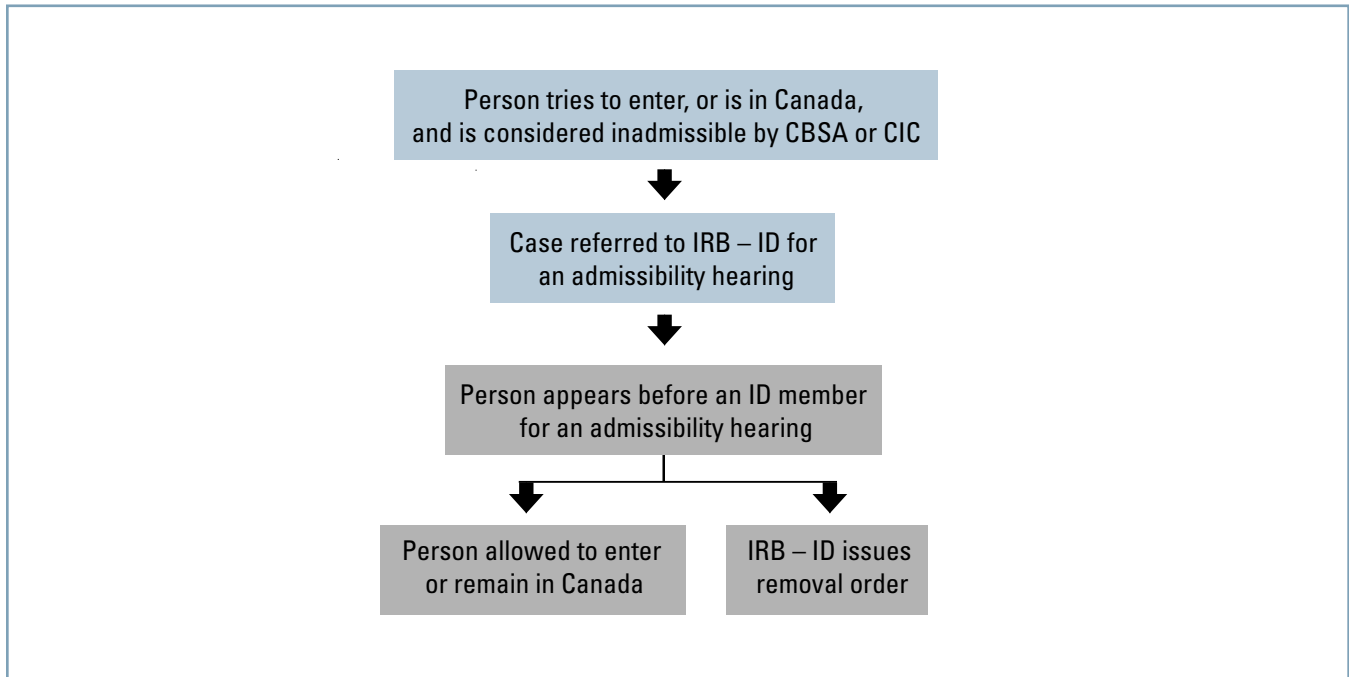
What happens after an admissibility hearing?

In some cases, you may be able to appeal the removal order to the Immigration Appeal Division (IAD) of the IRB. (For more information about removal order appeals, see page 21.) In some cases, you may be able to seek permission, or leave, of the Federal Court of Canada for a judicial review of the IRB's decision. Minister's counsel may also seek leave for judicial review.



The admissibility hearing process

The following chart illustrates the admissibility hearing process:



Who appears before the Immigration Division for a detention review?

Foreign nationals or permanent residents who have been detained by the CBSA for immigration reasons appear before the ID for detention reviews. The CBSA may detain, or hold, you (the foreign national or permanent resident) if it has reasonable grounds to believe that you:

- are unlikely to appear for an examination, hearing or *removal*
- are a danger to the public
- are inadmissible – that is, not allowed to enter or remain in Canada – for security reasons, or for violating human or international rights, or
- have not established your identity to the CBSA's satisfaction (this only applies to foreign nationals)

You may be held in a minimum-security immigration holding centre or in a provincial correctional facility.

What happens at a detention review?

When the CBSA detains you, a detention review must be held to decide whether there is reason under IRPA to continue your detention. Within 48 hours of when you are first detained (or as soon as possible afterwards), the ID will review the reasons for your detention. A member will hear arguments from Minister's counsel about why you should remain detained. You, or your counsel, will respond. The member may then order that you remain in detention.

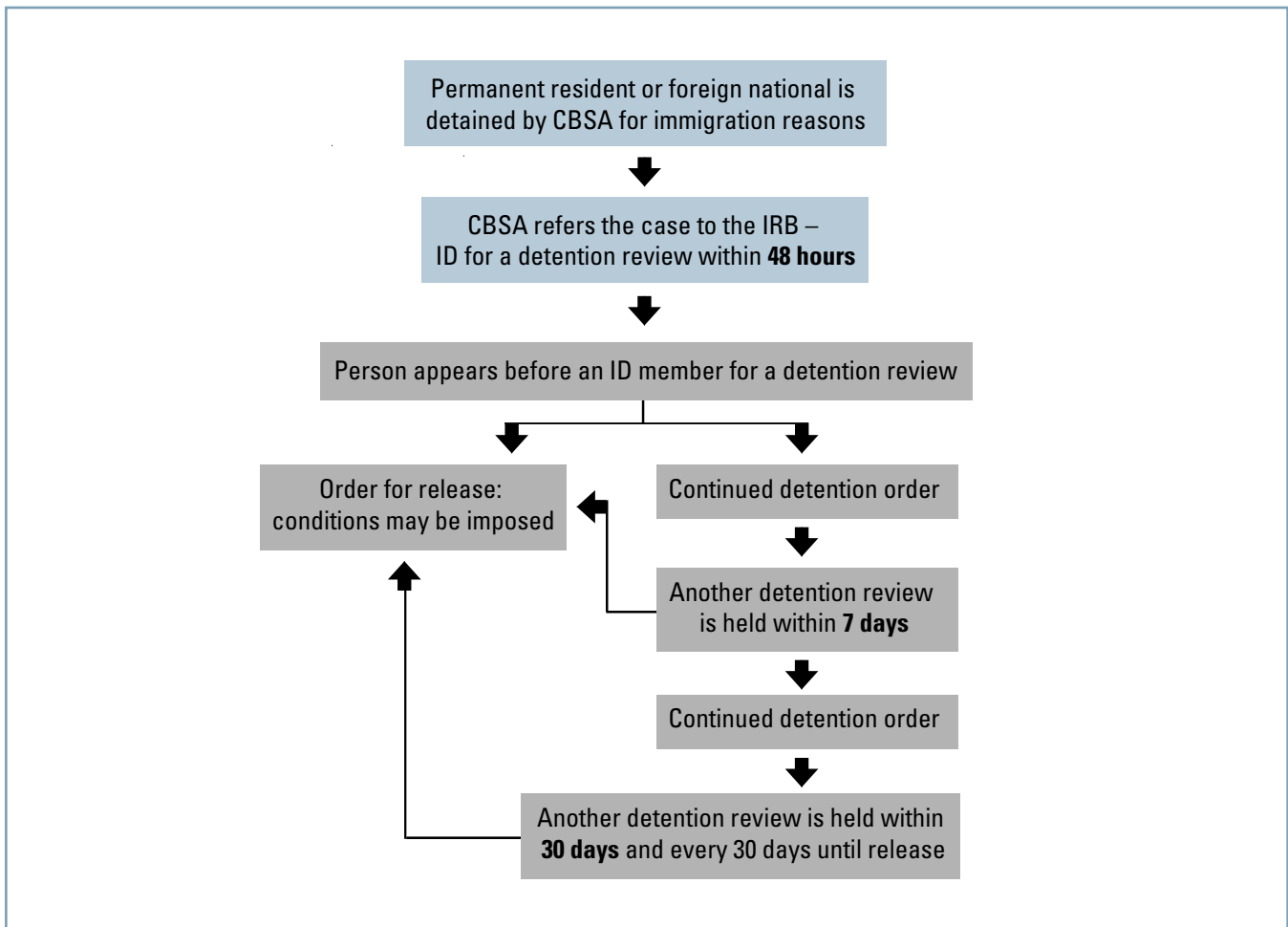


If the member orders you to remain in detention, you will appear for another hearing before the ID within seven days of the first review. The ID holds further hearings at least once every 30 days for as long as you are detained. You may ask for an early review of your detention at any time, but you must present new facts to justify the request. Either you or Minister’s counsel may ask the Federal Court of Canada for leave, or permission, for a judicial review of any IRB decision on detention.

If the member finds that there is no longer a reason under IRPA to continue your detention, then the member may order your release. The member may also order certain terms and conditions, such as posting a *bond* (a cash deposit) or guaranteeing to do something, such as reporting on a regular basis to an immigration office.

The detention review process

The following chart illustrates the detention review process:





The Immigration Appeal Division

What does it do?

The Immigration Appeal Division (IAD) hears appeals on immigration matters. There are four types of appeals:

- sponsorship appeals
- removal order appeals
- residency obligation appeals
- Minister's appeals

Here is a description of each type of appeal:

Sponsorship appeals

If you are a Canadian citizen or a permanent resident, and your application to sponsor the immigration of a close family member to Canada has been refused, you may appeal to the IAD.

Note: You may not appeal if your family member has been found to be inadmissible because of:

- a serious criminal offence punished in Canada by a term of imprisonment of two years or more
- involvement in organized crime
- security grounds
- violations of human or international rights, or
- misrepresentation (unless the person is your spouse, common-law partner or child)

Removal order appeals

If you are a permanent resident of Canada, a refugee, or a foreign national with a permanent resident visa and you have been ordered removed from Canada, you may appeal to the IAD.

Note: You may not appeal if you have been found to be inadmissible to Canada because of:

- a serious criminal offence punished in Canada by a term of imprisonment of two years or more
- involvement in organized crime
- security grounds, or
- violations of human or international rights



Residency obligation appeals

Generally, IRPA requires permanent residents to be physically present in Canada for at least 730 days out of every five years. If you are outside Canada and a Citizenship and Immigration Canada (CIC) visa office (also outside Canada) finds that you have not met this residency obligation, you may lose your permanent resident status. You may appeal the CIC decision to the IAD.

Minister's appeals

The Minister of Public Safety may appeal to the IAD a decision on admissibility made by the Immigration Division.

What are the grounds for an appeal?

The IAD may *allow* an appeal – and *set aside* the original decision – if there was:

- an error in law or fact
- a breach of a *principle of natural justice*

In some cases, the IAD may give special relief and allow an appeal based on humanitarian and compassionate considerations, such as the best interests of a child. However, to qualify for this relief, you the sponsor and your family member must fit in the IRPA definition of “sponsor” and “member of the family class.”

What happens if you appeal a sponsorship refusal?

As a sponsor, you have 30 days after the refusal to appeal to the IAD. Some sponsorship appeals go through an informal *alternative dispute resolution* process.

If your appeal is allowed and the original decision is set aside, CIC will resume processing the sponsorship application. CIC is bound by the IRB's decision. However, it is possible for CIC to refuse the application on other grounds, which you may also appeal to the IAD.

Either the Minister of Citizenship and Immigration or you, the sponsor, may apply to the Federal Court of Canada for leave, or permission, for judicial review of the IRB's decision. The Federal Court of Canada will either *dismiss* the application or return the case to the IAD for re-hearing.

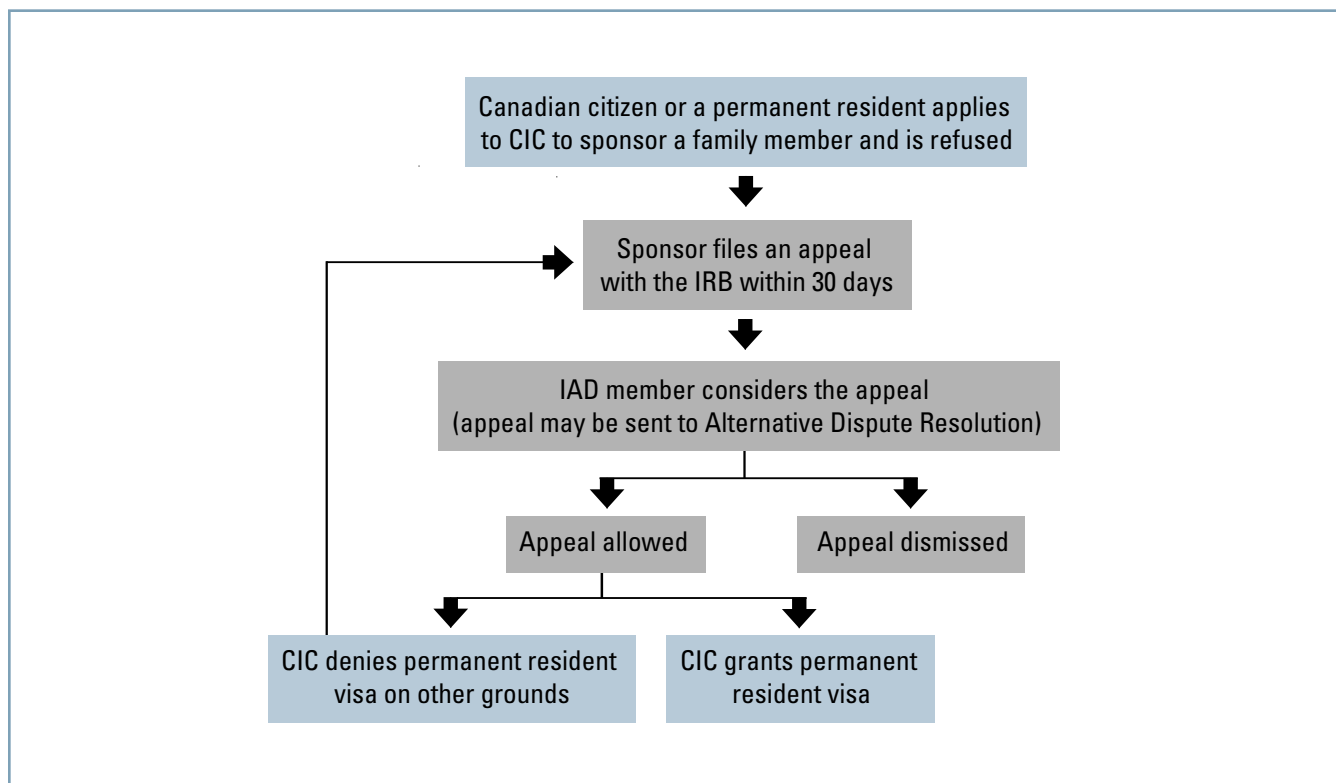
What is alternative dispute resolution?

The IAD may suggest that your appeal be decided through alternative dispute resolution (ADR). ADR is only suggested for appropriate cases. If you agree to ADR, this means that you will sit down with a *dispute resolution officer*, assigned by the IAD, and Minister's counsel to discuss your case. The dispute resolution officer will help you clarify the issues in your case and encourage both sides to agree on a decision about your case. This may mean that Minister's counsel agrees that your appeal should be allowed, or it may mean that you agree to withdraw your appeal. Alternative dispute resolution does not work for every case, so if you cannot all agree your appeal will return to the IAD for decision.



The sponsorship appeal process

The following chart illustrates the sponsorship appeal process:



What happens if you appeal a removal order?

If you want to appeal a removal order, you must do so within 30 days of its issue. In most cases, a member (decision-maker) will hear your appeal according to the tribunal process described on page 8. Not everyone can appeal. For example, if you have been convicted of a crime with a sentence of two years or more or if you are a security threat, you cannot appeal your removal order.

If the appeal is allowed, the removal order is set aside and you may remain in Canada. If the appeal is dismissed, the removal order will be upheld and the CBSA could remove you from Canada. (For more information on types of removal orders, please see page 16.)

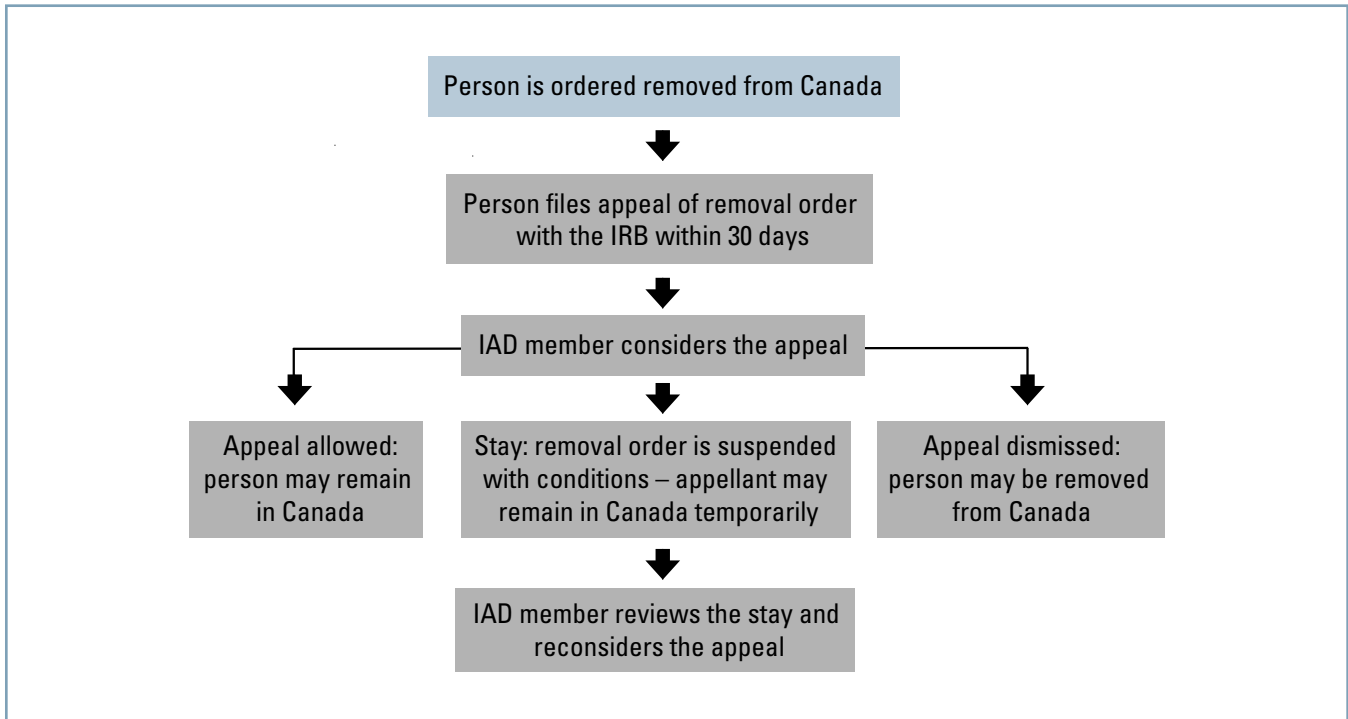
Instead of deciding to allow or dismiss the appeal, in many cases, the IAD may decide to stay the removal order. This means that, temporarily, it will not be carried out. The IAD will reconsider your appeal later, at a time set by the member hearing the appeal. If this happens, you must also meet certain conditions, such as reporting regularly to a CBSA office. The IAD may, at any time, change the conditions or cancel the stay. If the IAD cancels the stay, it will then decide to either allow or dismiss the appeal.

As with sponsorship appeal decisions, either you or Minister's counsel may apply to the Federal Court of Canada for leave, or permission, for judicial review of any IRB decision.



The removal order appeal process

The following chart illustrates the removal order appeal process:



What happens if you appeal a decision on the residency obligation?

If you are a permanent resident and CIC says that you have not met the residency obligation, you must appeal no later than 60 days after receiving the decision letter from CIC.

You may be outside Canada when you receive the decision letter from CIC on the residency status determination. If you were in Canada at any time over the past 365 days, CIC must give you a travel document so that you can re-enter the country. In other cases, you may apply to the IAD for a travel document. If the IAD decides that you must be at the hearing in person, it may issue an order. CIC will then issue you a travel document to allow you to enter Canada for the hearing. If you are not in Canada for the hearing, the hearing may be held by telephone.

Either way, in most cases, a member will hear your residency obligation appeal according to the tribunal process described on page 8.

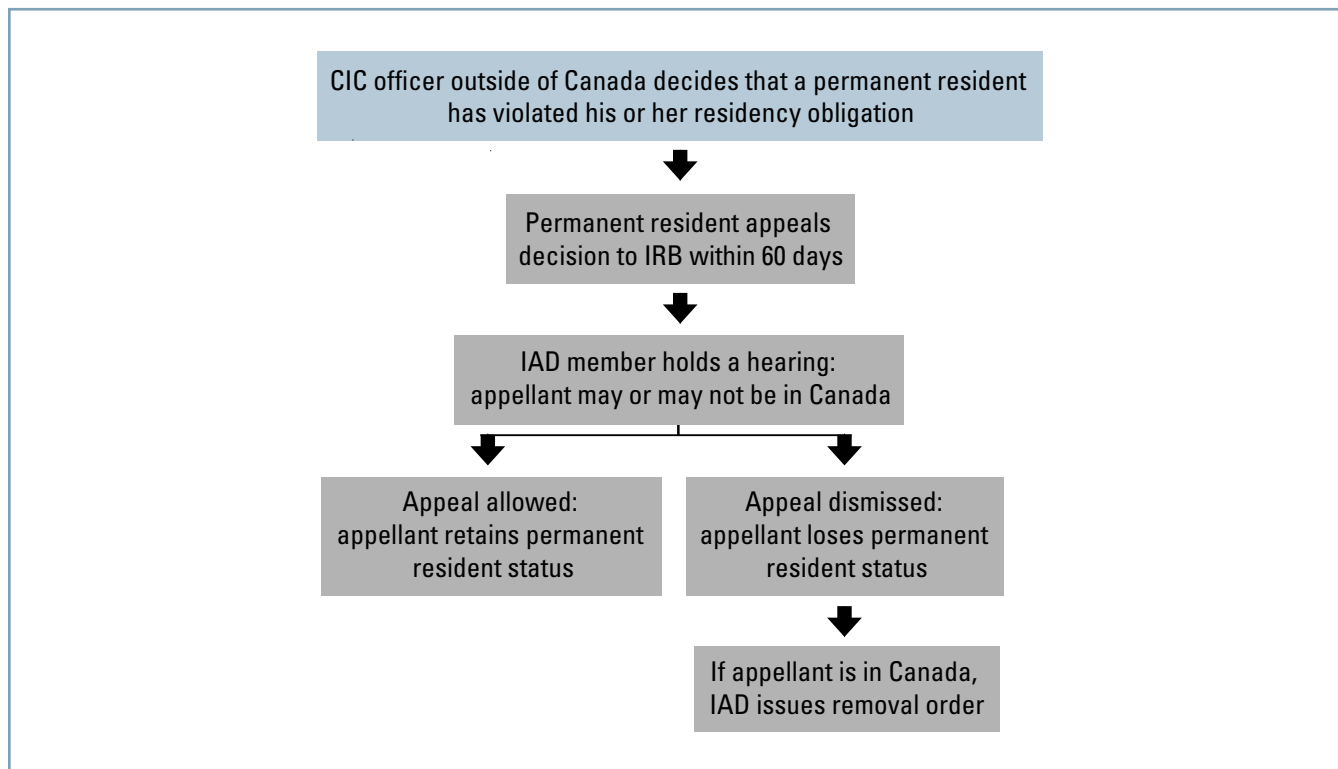
If the appeal on your residency obligation is allowed, the IAD will set aside CIC's decision and you will keep your permanent resident status. If the appeal is dismissed, you will lose your permanent resident status. If you are in Canada, the IAD will order your removal from Canada.

Either you or Minister's counsel may apply for leave, or permission, from the Federal Court of Canada for judicial review of any IAD decision.



The residency obligation appeal process

The following chart shows the residency obligation appeal process:





Glossary of Technical Terms

Adjournment: To stop a hearing before it has been completed for one reason or another. A new date to continue the hearing will be set.

Administrative tribunal: A decision-making body, such as a board or agency, established by the government to deliver justice in a more efficient, less formal way than a court of law. An administrative tribunal may regulate an area of law. Or, as with the IRB, it may adjudicate (or determine) certain legal rights. That means it will accept evidence and arguments, usually at hearings, and make decisions. In all cases, an administrative tribunal must use fair procedures to come to its decisions.

Admissible: A person who, under the rules of the *Immigration and Refugee Protection Act*, may enter and/or remain in Canada is admissible.

Admissibility hearing: A hearing conducted by the Immigration Division of the IRB to determine whether a foreign national or permanent resident is allowed to enter or remain in Canada.

Adversarial process: A process involving opposing parties, where one is arguing against the case of the other.

Allow (an appeal): To decide to set aside an earlier decision and so overturn that decision.

Alternative dispute resolution (ADR): An informal process that encourages the parties to voluntarily settle or resolve a case and therefore avoid a formal oral hearing. The most common ADR process is mediation. A neutral mediator encourages the people involved in the case to discuss the issues and try to settle their differences. A successful ADR process means that all parties to the case agree to a resolution.

Appellant: A person who appeals a decision. In the case of the IRB, in most cases, this is a person who appeals a negative decision on a sponsorship application, a residency obligation or a removal order to the Immigration Appeal Division of the IRB. For example, in a sponsorship appeal, this would mean that an application to sponsor a family member has been rejected.

Application: A procedure through which Minister's counsel or a person appearing before the IRB may ask the IRB to make a decision on a specific matter – for example, to change a date or time for a hearing or to have more time to produce a document. All applications must be in writing, following the process set out in the Rules of each division of the IRB.

Bond: An obligation or promise, such as to appear at a hearing, made binding by money (a **cash bond**) or action (a **performance bond**). For example, a certain amount of money may be placed in trust as a security deposit with the CBSA until a person appears at a hearing, when the money will be returned. This is a cash bond. Or, a trustworthy person may agree to ensure that the person in question attends his or her hearing. This is a performance bond.



Burden of proof: The responsibility to prove a case or claim. For example, a refugee claimant must show that he or she meets the definition of a Convention refugee as set out in the 1951 *United Nations Convention Relating to the Status of Refugees* or the definition of a person in need of protection as set out in the *Immigration and Refugee Protection Act*.

Canadian citizen: A person who was born in Canada or who has been granted Canadian citizenship under the *Citizenship Act*.

Contravene: To not follow the terms of a rule, regulation or law, as in “to have contravened the *Immigration and Refugee Protection Act*.”

Convention refugee: A person who meets the definition of a refugee contained in the 1951 *United Nations Convention Relating to the Status of Refugees*. In general, it is someone who has left his or her home country. He or she has a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. And, he or she is unable or – because of that fear – is unwilling to seek protection in his or her home country.

Counsel: Someone who represents and provides advice to a person appearing before the IRB. If counsel is being paid, he or she must be a lawyer or a registered immigration consultant. In Quebec, a notary may also be used. Counsel must be a member in good standing of his or her professional association. The person appearing before the IRB is responsible for paying his or her counsel. A trusted advisor or a family member or any other person, if they are not being paid, may also represent the person.

Detention review: A formal review done by the Immigration Division of the IRB of the reasons for the detention by the CBSA of a foreign national or permanent resident under the *Immigration and Refugee Protection Act*.

Designated representative: A person appointed by the IRB to act and make decisions on behalf of someone appearing before the IRB who is considered not capable of making decisions. Under the *Immigration and Refugee Protection Act*, a designated representative must be appointed for children who are not of legal age and for people who are mentally incompetent and unable to understand IRB proceedings. The designated representative may be a parent, in the case of a child, or it may be a professional, such as a lawyer or social worker.

Disclosure: The act of providing to the person appearing before the IRB, to the IRB and to Minister’s counsel the evidence or documents that will be used during a hearing, following the procedures set out in the Rules.

Dismiss (an appeal): To decide not to set aside an earlier decision and so permit that earlier decision to stand as is.



Dispute resolution officer (DRO): A mediator who is assigned to lead an alternative dispute resolution (ADR) process in an appeal before the Immigration Appeal Division of the IRB.

Excluded persons: People who cannot be Convention refugees or persons in need of protection. Excluded persons include people who have committed serious, non-political crimes outside Canada, crimes against peace, war crimes or crimes against humanity. They include people who are guilty of acts contrary to the purposes and principles of the United Nations. They also include people who have lived in a country (other than their home country) where they have rights and obligations similar to those of citizens of that country.

Fast-track expedited process: A shorter process used in the Refugee Protection Division of the IRB for deciding refugee claims that seem to be simple, well founded and open to a quick decision without a full hearing. A refugee protection officer interviews the claimant, and if the officer recommends accepting the claim, it is forwarded to a member for a decision. If the claim is not accepted without a hearing, a fast-track hearing or a full hearing is held.

Fast-track hearing: A type of process used in the Refugee Protection Division of the IRB to decide simple refugee claims that seem to be based on one or two issues and could be resolved quickly. A member hears the claim, but a refugee protection officer does not attend to ask questions.

Foreign national: A person from a country other than Canada who is not a Canadian citizen, a permanent resident or a protected person.

Full hearing: A process used for most refugee claims in the Refugee Protection Division of the IRB. A refugee protection officer questions the claimant to gather information about the claim. If the claimant has counsel, he or she will also ask the claimant questions. The member may also ask questions. The member will decide to accept or reject the claim based on the evidence presented.

Immigrant: A person who comes to settle in Canada as a permanent resident.

Immigration and Refugee Protection Act (IRPA): The Act of Parliament concerning immigration and refugee protection in Canada. It came into force on June 28, 2002, replacing the previous *Immigration Act*.

Inadmissible: A person who, under the rules of the *Immigration and Refugee Protection Act*, may not enter or remain in Canada is inadmissible.

Judicial review: A review of a decision, such as an IRB decision, by the Federal Court of Canada. A judicial review is not an appeal on the merits of a case or a re-hearing of a case. The Federal Court of Canada will only grant a review if, for example, the IRB decision was based on an error of law or of fact, or if a principle of natural justice was breached. If an application for judicial review is allowed, the Court will normally send the case back to the IRB to be reconsidered.



Leave: The permission of a court – in this case, permission of the Federal Court of Canada – to begin an application for judicial review of an IRB decision.

Member: A person who makes decisions on cases in one of the divisions of the IRB. Members of the Refugee Protection Division and the Immigration Appeal Division are appointed by the Governor-in-Council of the Government of Canada. Members of the Immigration Division are public service employees.

Minister's counsel: A person employed by Citizenship and Immigration Canada or Public Safety and Emergency Preparedness Canada (for the Canada Border Services Agency) to represent the interests of the specific department, usually in matters before the Immigration Division or Immigration Appeal Division of the IRB. Minister's counsel will present information about the case to the member.

Misrepresentation: In the general sense, the act of directly or indirectly misleading or lying to a government official, for example, by claiming a false identity.

Non-adversarial process: Proceedings in which no one is opposing, or arguing against, the case.

Permanent resident: A person who has been granted permission by Citizenship and Immigration Canada to settle in Canada permanently, and who may later apply to become a Canadian citizen. The previous term was "landed immigrant."

Permanent resident visa holder: A person who holds a permanent resident visa, but has not yet been admitted to Canada as a permanent resident.

Person in need of protection: A person who, if removed to his or her home country, would be subjected to a danger of torture, or to a risk to his or her life, or to a risk of cruel and unusual treatment or punishment.

Postponement: A delay in the scheduled start date or time of a hearing. A new date or time to begin the hearing will be set.

Pre-removal risk assessment (PRRA): A review conducted by Citizenship and Immigration Canada of the risk to someone if he or she were returned to another country. For example, would the person under the removal order risk being tortured or killed if he or she were returned to his or her home country? Canada will not return a person to a country where he or she will be at risk; this is called the principle of *non-refoulement*. The person under the removal order must apply to Citizenship and Immigration Canada for a PRRA.

Principles of natural justice: Principles of law that require administrative tribunals to be procedurally fair when making decisions. These principles include the person's right to know the case to be established and to have the opportunity to be heard, and the right to be judged by an impartial and independent decision-maker.



Refugee: A person who has had to flee his or her country because of a well-founded fear of persecution and has been given protection by the Government of Canada.

Refugee claimant: A person in Canada who requests protection by the Government of Canada as a Convention refugee or as a person in need of protection.

Refugee determination hearing: A hearing in which a member of the Refugee Protection Division of the IRB decides a claim for refugee protection.

Refugee protection officer (RPO): An employee of the IRB who assists the member in the refugee determination process. Refugee protection officers gather research, may interview or question claimants and provide recommendations to members. Their role is not to oppose, or to support, the refugee claim, but to help ensure that all relevant information is before the member to decide the claim.

Remove: The action by the Government of Canada to send a person out of Canada.

Removal order: A departure order, an exclusion order or a deportation order from the Government of Canada requiring a person to leave Canada.

Respondent: The person who responds to, or answers, an appeal. In the case of the IRB, this is the person who responds to an appeal to the Immigration Appeal Division. It is usually Minister's counsel for Citizenship and Immigration Canada or for Public Safety and Emergency Preparedness.

Rules: Each division of the IRB has rules that explain the procedures that must be followed in that division.

Safe third country: A country named by the IRPA Regulations as safe to travel through or live in, where a person could have obtained protection before claiming refugee protection in Canada. A claimant who comes directly or indirectly from such a country is not eligible to have his or her claim determined by the IRB.

Set aside: To overturn or reverse a decision. If the Federal Court of Canada sets aside an IRB decision, this means that the case is sent back to the IRB for reconsideration.

Sponsor: A Canadian citizen or permanent resident who applies to Citizenship and Immigration Canada to assist a family member to enter or remain in Canada as a permanent resident. A sponsor must commit to financially assisting the family member for a number of years. This applies to close family members who meet the definition of a "member of the family class," which includes spouses or common-law partners, dependent children, parents and some other family members.



Stay: A temporary suspension, or putting aside, of an order. At the IRB, during a removal order appeal, instead of allowing or dismissing the appeal, the Immigration Appeal Division may stay the order to remove the person from Canada. During that time, the person must meet certain conditions, such as reporting to an Immigration Office on a regular basis.

Temporary resident: A person who is legally in Canada, or who is seeking to come to Canada legally for a period of time, and who is not a Canadian citizen or a permanent resident and who does not hold a Minister's permit; sometimes referred to as a "visitor".

Visa: A travel document that gives a person permission to enter or remain in a country.





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Acronyms

ADR	Alternative dispute resolution
CBSA	Canada Border Services Agency
CIC	Citizenship and Immigration Canada
CSIC	Canadian Society of Immigration Consultants
DRO	Dispute resolution officer
IAD	Immigration Appeal Division
ID	Immigration Division
IRB	Immigration and Refugee Board of Canada
IRPA	<i>Immigration and Refugee Protection Act</i>
PRRA	Pre-removal risk assessment
PSEP	Public Safety and Emergency Preparedness Canada
RPD	Refugee Protection Division
RPO	Refugee protection officer
PIF	Personal Information Form
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees